Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Petition of AT&T Mobility LLC for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act and Transfer of the Alltel Pine Ridge Reservation Eligible Telecommunications Carrier Designation	)	WC Docket No. 09-197

To: The Commission

COMMENTS OF THE SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION

The South Dakota Telecommunications Association ("SDTA") opposes the Petition of AT&T Mobility LLC[1] ("AT&T") which seeks a "transfer" of the eligible telecommunications carrier (ETC) designation previously granted by this Commission to WWC LLC d/b/a Alltel for services provided on the Pine Ridge Reservation ("Reservation").[2]

A current list of SDTA's members is attached as appendix A, which includes all of South Dakota's rural telephone companies.[3] All of SDTA's members have been designated as ETCs by the South Dakota Public Utility Commission, including Golden West Telecommunications, a rural incumbent local exchange carrier serving the Reservation exchanges of Pine Ridge, Kyle and Long Valley. AT&T's Petition seeks the transfer of a previously granted competitive ETC

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[1] *Petition of AT&T Mobility, LLC for Designation as an Eligible Telecommunications Carrier and Transfer of the Alltel Pine Ridge Reservation Eligible Telecommunications Carrier Designation*, WC Docket No. 09-197, filed July 30, 2010. ("AT&T Petition").

[2] On January 9, 2009, Alltel Corporation was acquired by Cellco Partnership d/b/a Verizon Wireless. WWC, therefore, is now a subsidiary of Verizon Wireless and will be referred to as Verizon Wireless in this filing.

[3] The study areas or service areas operated in by the member companies, in which the companies provide both basic and broadband services, encompass approximately 80 percent of the state's geographic area. These companies serve a total of approximately 144,000 access lines. SDTA's membership includes 12 companies which are cooperative rural telephone companies, 5 companies owned and affiliated with such cooperatives, 1 tribally owned rural telephone company, 4 privately held rural telephone companies, and three municipal rural local exchange carriers having local office facilities in the state.

designation for this study area, SAC 391659.[4] As reflected in the original Pine Ridge ETC designation, section 214(e)(6) only permits the FCC to authorize federal universal service funding when the carrier "is not subject to the jurisdiction of a State commission."[5] Therefore, the designation AT&T seeks can extend only to the service that is provided to tribal members.[6] For any non-tribal members AT&T wishes to serve with the support of USF dollars, it will be necessary to apply for approval from the South Dakota PUC.[7]

As an initial matter, SDTA notes that Verizon Wireless has already indicated it is relinquishing both its federal and state ETC designation in the Pine Ridge area,[8] effectively leaving nothing to "transfer." Equally important, however, are the ramifications of allowing AT&T to receive Universal Service funding. The high cost fund is currently in crisis because of the explosive growth caused by competitive ETCs such as Verizon Wireless (and Alltel before the merger). Allowing AT&T to step into Verizon Wireless' shoes in this case undermines a number of steps the Commission has taken to address the high cost crisis, including the conditions of the Alltel/Verizon merger order and the recent order in the Corr Wireless proceeding.

These concerns are addressed in turn.

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[4] *See* AT&T Petition, Ex. C.

[5] *In the Matter of Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota; Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, MEMORANDUM OPINION AND ORDER, released October 5, 2001, at ¶10.

[6] *Id.* at ¶25.

[7] *Id.*

[8] See, *Federal-State Joint Board on Universal Service Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, WC Docket No. 09-197, Notice of Relinquishment of Eligible Telecommunications Carrier Designation, filed August 11, 2010 (FCC Notice of Relinquishment); Petition to Amend and Consolidate Eligible Telecommunication Carrier Designations in the State of South Dakota and to Partially Relinquish ETC Designation, TC10-090, filed September 3, 2010 (SD ETC Petition).

I. Verizon Wireless has Already Relinquished the ETC Designation AT&T Seeks

SDTA respectfully submits that there is nothing to transfer to AT&T. As the Commission is aware, Verizon Wireless acquired the Golden West SAC 391659 as part of its merger with Alltel. On August 11, 2010, Verizon Wireless notified the Commission that it was relinquishing its ETC designation "for service offered to tribal members on the Pine Ridge Reservation in South Dakota effective immediately or no later than 30 days from the date of this Notice."[9] On September 3, 2010, Verizon Wireless filed a petition with the South Dakota Public Utilities which, in part, was intended to provide notice of the relinquishment of its ETC designation with respect to the Golden West Study Area (SAC 391659).[10] As Verizon Wireless points out in both of these filings, the Act, the FCC's universal service rules, and, in the case of the SD ETC Petition, South Dakota's own statutes indicate that approval of its relinquishment is mandatory.[11] The balance of these filings by Verizon Wireless shows that it meets the requirements for relinquishment.[12] Since no further steps are required other than approval of the federal and state notices by the Commission and South Dakota Public Utilities Commission, respectively, and the relinquishments having immediate effect,[13] there is effectively nothing to transfer to AT&T in this case. The Commission should therefore deny AT&T's petition.[14]

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[9] FCC Notice of Relinquishment at 1.
[10] SD ETC Petition at 9.
[11] FCC Notice of Relinquishment at 3-4; SD ETC Petition at 10.
[12] FCC Notice of Relinquishment at 4-5; SD ETC Petition at 10 – 12.
[13] FCC Notice of Relinquishment at 1; SD ETC Petition at 1.
[14] SDTA submits that it is questionable whether an ETC designation can be "transferred" under the Act, especially where the designation is transferred to an entirely different unaffiliated company. It appears the Commission has not considered this issue and, at minimum, it draws into question whether the Wireline Competition Bureau has sufficient delegated authority to consider AT&T's request.

II. Allowing AT&T Access to High Cost Support is Bad Public Policy

SDTA submits that AT&T's petition to obtain ETC designation by "transfer" is legally flawed, and should be rejected. However, even if AT&T is ultimately granted the requested ETC status, SDTA submits that AT&T nevertheless should be fenced off from the universal service high cost fund. The reason is simple: The high cost fund is in crisis, having been described as subject to "explosive growth" and warranting an "emergency cap" for competitive ETCs ("CETCs"), like AT&T.[15] Indeed, recognizing Alltel's role in such growth, the FCC capped the company's high cost receipts when it was acquired by Atlantis Holdings.[16] As discussed in more detail in the following section, the FCC subsequently imposed a related condition upon Verizon's later acquisition of the Alltel wireless licenses and assets, when it required the phased roll back by Verizon of the related high cost fund receipts.[17]

AT&T's desire to receive high cost funding now is flatly contrary to the public interest. AT&T's high cost draw will, at least for the immediate future, be based upon the now-frozen "identical support rule" amounts. The most recent Federal-State Joint Board has recommended the elimination of this rule,[18] since it has no relation to the cost of the underlying competitive ETC and since it has placed explosive demands upon the high cost fund. The Commission responded to this concern, in part, when it capped high cost funding for competitive ETCs, like AT&T. It characterized the growth in high cost support, caused by CETCs and the identical

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[15] *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Alltel Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers; RCC Minnesota Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, WC Docket No. 05-337; CC Docket No. 96-45, ORDER, released May 1, 2008, at ¶1. ("Interim Cap Order")

[16] *Id.*

[17] *See Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, WT Docket No. 09-104, released June 22, 2010. ("AT&T/Cellco Order").

[18] *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, 22 FCC Rcd 20477, 20486 at ¶35. (November 2007).

support rule, as having placed the entire universal service fund "in dire jeopardy."[19] More recently, the Commission's Broadband Task Force Report recommended, like the Joint Board, that this rule be eliminated.[20] Indeed, citing the Joint Board's recommendation on the elimination of the identical support rule, together with the cap on ALLTEL's high cost funding as a condition of its acquisition by Atlantis Holdings, the FCC capped AT&T's high cost funding.[21] Importantly, at the time of that Memorandum Opinion and Order approving the Dobson transaction, the Commission found AT&T to be "...the second largest beneficiary of competitive ETC funding..."[22]

As the Commission concluded in Verizon's acquisition of the licenses and assets, the continued receipt of high cost funding by what may be the largest U.S. wireless carrier,[23] is not good public policy.

In sum, SDTA opposes the AT&T Petition as an extreme example of bad public policy. The high cost fund is still in peril as the Commission knows, and AT&T, as the largest telecommunications company in the world (together with its affiliates) is the least deserving of these finite resources. As was the case with Verizon, the Commission should cordon off these high cost support funds. SDTA would not, however, have any objection to AT&T's participation in the Lifeline/Low Income program, provided AT&T has pursued and received its ETC designation through the proper process.[24]

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[19] Interim Cap Order at ¶6.
[20] *National Broadband Plan*, Federal Communications Commission at page 147-148.
[21] *In the Matter of Applications of AT&T Inc and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations, File Nos. 0003092368 et al*, WT Docket No. 07-153, MEMORANDUM OPINION AND ORDER, released November 19, 2007, ¶69-72 (conditioning acquisition upon AT&T's "voluntary commitment" to an interim cap on high-cost, competitive ETC support).
[22] *Id.* at ¶70.
[23] *See, e.g.,* D. Meyer, "AT&T Mobility Q1 results bolstered by non-traditional devices" RCR Wireless News, April 21 2010. (showing AT&T Mobility with approximately 87 million customers).
[24] SDTA notes that, if the Commission allows AT&T's requested ETC transfer designation to proceed at all, SDTA has no objection to AT&T's participation in the low-income and related programs which have allowed a service

III. The Phase-down Condition of the Verizon-Alltel Merger should Survive Divestiture in this Particular Case

If AT&T is to be designated an ETC for the areas it has acquired as a result of the divestiture, it should be subject to the same phase-down condition the Commission imposed on Verizon. SDTA recognizes that, in imposing conditions on the Verizon-Alltel merger, the Commission expressly exempted from the phase-down condition properties sold off to third parties, and properties acquired after the merger and divestiture.[25] Nevertheless, SDTA submits that this case presents unique facts raising the same public policy concerns as the Verizon transaction, and which warrant the survival of the phase-down condition.

As discussed above, there are strong public policy reasons for preventing AT&T from receiving high cost funding. If the Commission allows AT&T to simply step into Verizon's shoes as a result of this transfer, it effectively eviscerates the protection that the conditions on the Verizon-Alltel merger were meant to put in place without alleviating any of the Commission's concerns. In the Verizon-Alltel merger, the Commission was compelled, by the "unique facts" of the transaction to impose the phase-down requirement. Specifically, the Commission recognized the transaction involved, "the largest wireless company in the United States, based on revenues, as well as the number of retail customers, with another wireless company that is the largest recipient of the high-cost competitive ETC support."[26] AT&T is one of, if not the largest

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offering at $1 per month. *See* AT&T/Cellco Order at ¶140. This program appears to have been the Commission's real concern when it authorized AT&T's acquisition of licenses on the Reservation and, indeed, AT&T's 'Commitment Letter' filed in that proceeding committed to build out a 3G network on the Reservation <u>without</u> any countervailing high cost fund commitment by the Commission. *See Letter from Joan Marsh, Vice President -- Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission* (May 20, 2010).

[25] *See In the Matter of High Cost Universal Service Support; Federal-State Joint Board on Universal Service; Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC*, WC Docket No. 05-337; CC Docket No. 96-45, ORDER AND NOTICE OF PROPOSED RULEMAKING, at ¶11, fn 33, released September 3, 2010 ("Corr Wireless Order/NPRM"); AT&T/Cellco Order at ¶86, fn 282.

[26] *In the Matter of Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and* De Facto *Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the*

wireless provider in the country. Whatever concerns the Commission had in placing the phase-down condition on the Verizon-Alltel merger are equally warranted here, if not to a greater degree. Size is a unique factor in this transaction, as it was in the Verizon/Alltel transaction, and it warrants a consistent public policy response from the Commission here.

IV. AT&T's Petition Undermines the Commission's Recent Rulemaking

AT&T's petition presents serious complications in light of the Commission's recent Order and Notice of Proposed Rulemaking released in response to Corr Wireless' Request for Review of a USAC decision.[27] In that Order, the Commission attempted to clarify a number of issues arising from the Verizon/Alltel (and the Sprint/Clearwire) transaction. The Commission recognized a distinction between maintaining ETC status while surrendering ETC support and relinquishing ETC status entirely in one or more service areas. Most importantly, the Commission recognized the particular effects these mechanics have on the interim cap amount currently in place. But, it appears that the Commission did not contemplate the effect of a *transfer* of ETC status. AT&T's proposal raises serious questions in this regard – would AT&T be required to surrender ETC support, as Verizon had? Would AT&T, as "transferee", be considered a new ETC for the purposes of the interim cap? Would the transfer be considered a relinquishment, whose implications on the interim cap are currently unknown? SDTA respectfully submits that permitting AT&T to go forward with its request necessarily creates more ambiguity and increases, rather than decreases, the number of hurdles standing in the way of workable USF reform.

Communications Act, WT Docket No. 08-95, MEMORANDUM OPINION AND ORDER AND DECLARATORY RULING, 23 FCC Rcd 17444, 17532 at ¶197 (2008). Footnotes omitted.

[27] *See* Corr Wireless Order/NPRM.

Furthermore, allowing AT&T to "transfer" ETC status effectively undermines the Commission's proposal in the NPRM section of the Corr Wireless Order/NPRM. The Commission proposes to amend the interim cap rule so that, if a competitive ETC relinquishes its ETC status, the capped amount for that state would be reduced.[28] This proposal is targeted at reining in high-cost universal service disbursements; yet, granting AT&T's petition may well provide a loophole to avoid such a reduction and foil the Commission's efforts. Allowing AT&T to step into Verizon's shoes thus may undermine an important opportunity to reclaim USF dollars from competitive carriers. It is likely that AT&T will seek similar treatment for all of its divestiture properties. The Commission should be especially cautious of granting AT&T's petition, lest it set a dangerous precedent that could impact a substantial amount of USF dollars.

V. Conclusion

For the forgoing reasons, SDTA opposes the transfer of Verizon Wireless's (formerly WWC LLC's) ETC designation for the Pine Ridge Reservation to AT&T. Arguably, there is nothing for Verizon Wireless to transfer to AT&T as a result of its August 11 and September 3 notices of relinquishment. Furthermore, strong public policy reasons exist to deny AT&T USF support, as the high cost fund is in serious jeopardy due to competitive ETCs like AT&T and Alltel before it. Finally, granting AT&T's request would have a confusing effect on the Commission's current rulemaking proceeding relative to application of the interim cap and treatment of surrendered or relinquished ETC support, and would create a loophole to the Commission's proposal in the NPRM before the ink even dries. SDTA respectfully submits that the Commission should deny AT&T's petition in its entirety. Otherwise, the Commission should

[28] Corr Wireless Order/NPRM at ¶23.

stipulate that AT&T cannot receive high cost funding or condition any high cost support to AT&T, as with Verizon, on a five year phase down requirement.

Respectfully submitted,

THE SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION

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Certificate of Service

I hereby certify that on September 10, 2010, a copy of the forgoing Comments of the South Dakota Telecommunications Association was served on each of the following via U.S. Postal Service or electronic mail, as indicated:

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